
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1595

State of Washington

60th Legislature

2007 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Appleton, Jarrett, Hunt and Lantz)

READ FIRST TIME 3/5/07.

1 AN ACT Relating to shellfish protection programs; amending RCW
2 90.72.020; adding new sections to chapter 90.72 RCW; creating new
3 sections; and repealing RCW 90.72.030 and 90.72.045.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature recognizes the importance of
6 shellfish to Washington's environment, economy, and heritage, and
7 further recognizes that certain locations merit additional protective
8 measures than currently exist. This act intends to expand the
9 protection of shellfish to Clallam, Grays Harbor, Island, Jefferson,
10 King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish,
11 Thurston, and Whatcom counties.

12 **Sec. 2.** RCW 90.72.020 and 1985 c 417 s 2 are each amended to read
13 as follows:

14 ~~((For purposes of this chapter,))~~ The definitions in this section
15 apply throughout this chapter unless the context clearly requires
16 otherwise.

17 (1) "Shellfish areas" means all saltwater areas, whether tidal or

1 subtidal, containing shellfish species typically grown or harvested for
2 human consumption.

3 (2) "Shellfish threatened area" means:

4 (a) Those commercial shellfish areas classified by the department
5 of health as approved or conditionally approved that meet the following
6 conditions:

7 (i) Are compliant with existing health standards;

8 (ii) Have at least one additional water quality sampling station in
9 the area that the department of health determines exceeds the ninetieth
10 percentile value of thirty fecal coliforms per one hundred milliliters
11 of water using the department of health's bacterial standards; and

12 (iii) Have been classified for at least five years; or

13 (b) Those recreational shellfish areas classified as open that meet
14 the same conditions as specified in (a)(i), (ii), and (iii) of this
15 subsection.

16 (3) "Shellfish tidelands" means all saltwater tidelands on which
17 shellfish are grown or harvested for human consumption.

18 (4) "Specified county" means Clallam, Grays Harbor, Island,
19 Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit,
20 Snohomish, Thurston, and Whatcom counties.

21 NEW SECTION. Sec. 3. A new section is added to chapter 90.72 RCW
22 to read as follows:

23 For specified counties, the following applies to the legislative
24 authority of each county having shellfish areas within its boundaries:

25 (1) The legislative authority is authorized to establish a
26 shellfish protection district to include areas in which pollution
27 impacts the water quality upon which the continuation or restoration of
28 shellfish farming or harvesting is dependent, or when the department of
29 health identifies a shellfish threatened area as defined in this
30 chapter.

31 (2) The legislative authority constitutes the governing body of the
32 district and shall adopt a shellfish protection program to be effective
33 within the district.

34 (3) The legislative authority may appoint a local advisory council
35 to advise the legislative authority in preparation and implementation
36 of a shellfish protection program.

1 (4) The shellfish protection program must include any elements
2 deemed appropriate to deal with the nonpoint pollution threatening
3 water quality including, but not limited to, the following:

4 (a) Requiring the elimination or decrease of contaminants in storm
5 water runoff;

6 (b) Establishing monitoring, inspection, and repair elements to
7 ensure that on-site sewage systems are adequately maintained and
8 working properly;

9 (c) Ensuring that animal grazing and manure management practices
10 are consistent with best management practices; and

11 (d) Establishing educational and public involvement programs to
12 inform citizens on the causes of the nonpoint pollution and what
13 citizens may do to decrease the amount of the pollution.

14 (5) The legislative authority shall consult with the department of
15 health, the department of ecology, the department of agriculture, the
16 department of natural resources, or the conservation commission as
17 appropriate as to the elements of the program.

18 (6) If the legislative authority is effectively addressing failing
19 on-site sewage systems within an existing marine recovery area, as
20 provided in RCW 70.118A.040, then such effective actions satisfy the
21 corresponding element requirement in the shellfish protection district.

22 (7) The legislative authority has full jurisdiction and authority,
23 within the limits of RCW 90.72.040 and 90.72.070, to do the following:

24 (a) Manage, regulate, and control its shellfish protection program;
25 and

26 (b) Fix, alter, regulate, and control the fees for services
27 provided and charges or rates as provided under those programs.

28 (8) The department of health shall grant funds to legislative
29 authorities, as available, to assist with the costs of creating,
30 establishing, implementing, and enforcing the provisions of shellfish
31 protection programs formed for shellfish threatened areas within the
32 specified counties.

33 (9) Programs established under this chapter may, but are not
34 required to, be part of a system of sewerage as defined in RCW
35 36.94.010.

36 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.72 RCW
37 to read as follows:

1 (1) The county legislative authority in a specified county shall
2 create a shellfish protection district and establish a shellfish
3 protection program, as provided in section 3 of this act, to address
4 the causes or suspected causes of pollution. The shellfish protection
5 district and shellfish protection program must be created within one
6 hundred eighty days after:

7 (a) The department of health, because of water quality degradation
8 due to ongoing sources of pollution, has closed, or downgraded the
9 classification of, a shellfish area; or

10 (b) A shellfish area has been identified as a shellfish threatened
11 area for greater than one year.

12 (2) The department of health may grant an extension to the one
13 hundred eighty-day time limit to create a shellfish protection district
14 and establish a shellfish protection program, provided that all of the
15 following conditions are met:

16 (a) Each extension may not be more than thirty days;

17 (b) No more than two extensions may be granted for each shellfish
18 area; and

19 (c) The legislative authority requires additional time to establish
20 a taxing or fee district, or a funding account or source, to pay for
21 the cost of creating, implementing, or enforcing the shellfish
22 protection program.

23 (3) The county legislative authority is encouraged to implement
24 elements of the shellfish protection program as soon as practicable
25 following the department of health action requiring the formation of
26 the shellfish protection district.

27 (4) The county legislative authority shall initiate implementation
28 of all elements of the shellfish protection program no later than sixty
29 days after it is established.

30 (5) If water-quality sampling or shoreline sanitary surveys
31 conducted by the department of health indicate that nonpoint sources of
32 pollution that are causing the closure of, or have caused the
33 downgraded classification or status of, a shellfish threatened area
34 have been corrected prior to the deadline for creating a shellfish
35 protection district, then the requirement to form the district is
36 waived.

37 (6) The county legislative authority shall enforce the provisions
38 of shellfish protection programs upon implementation.

1 (7) A copy of the shellfish protection program must be provided to
2 the departments of health, ecology, and agriculture, to the applicable
3 local conservation districts, and to the conservation commission. An
4 agency that has regulatory authority for any of the sources of nonpoint
5 pollution regulated by the shellfish protection program shall cooperate
6 with the county in its implementation. The county legislative
7 authority shall submit a written report to the department of health
8 annually that describes the status and progress of the shellfish
9 protection program.

10 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.72 RCW
11 to read as follows:

12 The department of health shall allocate available funding from the
13 shellfish contamination prevention and protection account, created in
14 section 6 of this act, with the following conditions:

15 (1) Funding to the specified counties must be restricted to the
16 creation, establishment, implementation, and enforcement of shellfish
17 protection districts for shellfish areas that have been identified as
18 shellfish threatened areas for greater than one year.

19 (2) Specified counties that apply for one-time funding from the
20 department of health are eligible to receive matching funds. For these
21 matching funds, the department of health shall contribute one dollar
22 for every one dollar spent by the county.

23 (3) Specified counties that establish ongoing funding through a
24 taxing or fee district are eligible to receive matching funds from the
25 department of health. For these matching funds, the department of
26 health shall contribute two dollars for every one dollar spent by the
27 county.

28 (4) Specified counties that demonstrate, to the department of
29 health, an economic hardship and an inability to afford the county's
30 matching share under:

31 (a) Subsection (2) of this section, are eligible, and may apply
32 for, full one-time funding from the department of health; and

33 (b) Subsection (3) of this section, are eligible, and may apply
34 for, full ongoing funding from the department of health.

35 (5) Applications for full one-time funding and for full ongoing
36 funding, as provided in this section, must be separate applications.
37 Economic hardship must be demonstrated separately for each application.

1 (6) The department of health may reimburse itself for
2 administrative and technical assistance costs incurred under sections
3 3 and 4 of this act.

4 (7) Reimbursement to the department of health, as specified in
5 subsection (6) of this section, may be no more than ten percent of the
6 total funds provided for the purposes of sections 3 through 5 of this
7 act.

8 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.72 RCW
9 to read as follows:

10 The shellfish contamination prevention and protection account is
11 created in the state treasury. Moneys from the aquatic lands
12 enhancement account that are directed for deposit to the shellfish
13 contamination prevention and protection account must be deposited into
14 the account. Moneys in the account may be spent only after
15 appropriation. Expenditures from the account may be used only for the
16 purposes of this act.

17 NEW SECTION. **Sec. 7.** If specific funding for the purposes of
18 section 5 of this act, referencing section 5 of this act by bill or
19 chapter number and section number, is not provided by June 30, 2007, in
20 the omnibus appropriations act, section 5 of this act is null and void.

21 NEW SECTION. **Sec. 8.** The following acts or parts of acts are each
22 repealed:

- 23 (1) RCW 90.72.030 (Shellfish protection districts--Establishment--
24 Governing body--Programs) and 1992 c 100 s 2 & 1985 c 417 s 3; and
- 25 (2) RCW 90.72.045 (Shellfish protection districts--Programs
26 required after closure or downgrading of growing area classification)
27 and 1992 c 100 s 4.

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